L. REV. 35. But the right to take land by eminent domain includes the taking of a limited interest in property in the nature of an easement. *Pacific Postal Telegraph-Cable Co.* v. *Oregon, etc. R. Co.*, 163 Fed. 967. See *Attorney-General* v. *Williams*, 174 Mass. 476, 55 N. E. 77, 178 Mass. 330, 59 N. E. 812; *Williams* v. *Parker*, 188 U. S. 491, 23 Sup. Ct. 440. And this might be under either theory of public use. A second plan would be for the state to purchase and retain the fee of the surrounding property; a third, for the state to resell subject to restrictions. Either of these would be within the broader interpretation of public use. But under the stricter view, there would be the difficulty of proving a sufficient public user beyond mere public advantage. Where the state retains the fee, it might be a close case. But where the right retained is solely in the nature of an easement, the method would be unconstitutional.

EVIDENCE — HEARSAY: IN GENERAL — ADMISSIBILITY OF DECLARATIONS ON QUESTIONS OF IDENTIFICATION. — At a trial for murder, in order to identify the defendant as the guilty party, the prosecution offered in evidence a declaration of the victim, in which he pointed out the accused and identified him as the assailant. The statement was not shown to be a dying declaration. *Held*, that the evidence is admissible. *State* v. *Findling*, 144 N. W. 142 (Minn.).

The court assumes a general relaxation of the rules of evidence on questions of identification. In a few respects this appears to be true. Thus the opinion rule does not exclude the opinions of properly informed witnesses concerning the identity of a person. *Craig* v. *State*, 171 Ind. 317, 86 N. E. 397; *State* v. *Powers*, 130 Mo. 475, 32 S. W. 984. Leading questions are also allowed with greater freedom. *Rex* v. *Watson*, 2 Stark. 116, 128. But see *Rex* v. *Dickman*, 5 Cr. App. R. 135, 142. These minor variations, however, scarcely sustain the broad ground taken by the court. An unsworn identification, by declaration alone or with gesture, presents all the elements of hearsay, and is therefore inadmissible by the weight of authority. *O'Toole* v. *State*, 105 Wis. 18, 80 N. W. 915; *State* v. *Houghton*, 43 Ore. 125, 71 Pac. 982. Some courts admit the declaration as part of the *res gesta*, on the ground that it accompanies and explains the material act of pointing out the accused. *Lander* v. *People*, 104 Ill. 248. Such a view, however, ignores the hearsay quality of the gesture itself, and virtually makes an accompanying gesture the only requisite for the admissibility of any declaration. The mere recognition of the defendant by the victim might possibly have enough probative value on the issue of identification to render it admissible as an expression of a material mental state. See *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S. 285; *Jacobs* v. *Whitcomb*, 10 Cush. (Mass.) 255. But this exception to the hearsay rule would not cover the accompanying descriptive declaration. *State* v. *Egbert*, 125 Ia. 443, 101 N. W. 191; *Clark* v. *State*, 39 Tex. Cr. R. 152, 45 S. W. 696. A different situation arises, of course, when a former identification is used to supplement a witness's recollection. *Regina* v. *Burke*, 2 Cox C. C. 295. And the hearsay rule would not affect the admissibility of the previous declaration to support an impeached witness. See *Murphy* v. *State*, 41 Tex. Cr. R. 120, 51 S. W. 940. See also 2 WIGMORE, EVIDENCE, § 1130. But the principal case seems difficult to support.

FALSE IMPRISONMENT — ARREST WITHOUT WARRANT WHERE CRIME CHARGED NOT COMMITTED. — A bookseller having suffered repeated losses, and reasonably believing a certain clerk to be guilty of the thefts, caused him to be arrested without a warrant and prosecuted, on the charge of having stolen a particular book. This book had not in fact been stolen. *Held*, that the bookseller, though not liable for malicious prosecution, is liable for false imprisonment. *Walters* v. *Smith*, 30 T. L. Rep. 158.

There is a sharp distinction between malicious prosecution and false imprisonment. See SALMOND, TORTS, 2 ed., 351. In the former, malice and lack of probable cause must be shown. *Abrath* v. *N. E. Ry. Co.*, 11 Q. B. D. 440. In the latter, even honest mistake is in general no defense. See *Lock* v. *Ashton*, 12 Q. B. 871. The defendant in this case having probable cause is not liable for malicious prosecution. However, an arrest on suspicion of felony without warrant is *primâ facie* wrongful, and must be justified by showing authority to act, and reasonable action. A constable, having authority to act by virtue of his office, need only show that he acted reasonably. *Beckwith* v. *Philby*, 6 B. & C. 635. A private citizen has such authority only when a felony has in fact been committed. See 2 HALE P. C. 78; *Siegel Cooper Co.* v. *Connor*, 70 Ill. App. 116. In the principal case, the plaintiff's arrest for the crimes committed would then have been justified. But unless a party acts in reliance upon a justification, it cannot be set up. *Regina* v. *Dadson*, 4 Cox C. C. 358. It would seem to follow that the defendant can justify only by proving the crime charged; and that failing in this, he is liable for false imprisonment.

FALSE IMPRISONMENT — CIVIL LIABILITY OF MINE OWNER FOR FAILING TO BRING EMPLOYEES UP FROM MINE. — The plaintiff, employed in the defendant's mine, in breach of his contract, quit work at noon, and the defendant refused to bring the plaintiff to the surface, although notified of his desire to leave the mine. The plaintiff brought an action for false imprisonment. *Held*, that the plaintiff cannot recover. *Herd* v. *Weardale Steel, C. & C. Co.*, [1913] 3 K. B. 771.

The principal case proceeds on the ground that there was no act of imprisonment. The omission to bring the plaintiff up from the mine cannot be so linked with the previous act of letting him down as to constitute a single act of imprisonment; for the acts of commission and omission are too far apart in time and nature to be conceived of as one. *Hill* v. *Caverly*, 7 N. H. 215. Nor is the defendant's position analogous to that of a locomotive engineer, whose omission to exercise control over the moving force is substantially a misfeasance. See *Kelly* v. *Metropolitan Ry. Co.*, [1895] 1 Q. B. 944. A jailer, confining his prisoner longer than his legal sentence, has been held liable for false imprisonment. *Withers* v. *Henley*, Cro. Jac. 379; *Mee* v. *Cruikshank*, 86 L. T. Rep. N. S. 708. But practically the prison routine must cause the jailer to commit new misfeasances. Furthermore, in the principal case the prior act of lowering was not tortious because of the plaintiff's consent. See *Kirk* v. *Garrett*, 84 Md. 383, 35 Atl. 1089. Thus the court seems clearly correct in holding that there was no false imprisonment.

The facts suggest the possibility of working out a relational duty on the part of the defendant to bring his employee to the surface. It has been held that a railroad company, having sent a gang of men to an isolated region in very cold weather, was bound to transport them to some point where they could get food and shelter. *Shoemaker* v. *St. Paul & Duluth Ry. Co.*, 46 Minn. 39, 48 N. W. 559. Recovery has also been allowed where the superintendent of a coal mine failed to take proper measures to save the lives of miners caught in the mine when a fire had accidentally broken out. *Bessemer Land & Improvement Co.* v. *Campbell*, 121 Ala. 50, 25 So. 793. In the principal case, the plaintiff, by the nature of his employment, was placed in a situation where his personal liberty was dependent on a means of exit within the defendant's exclusive control. It is possible to argue that not only the interest of personal safety but that of personal liberty should be secured by this relational duty of the master. On this supposition it would follow, from the cases cited, that a duty existed to bring the plaintiff up from the mine. Although the contract relation between the parties is at an end, as long as the dependent situation created by the employment exists, the employer must perform his relational duties.